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STAFF REPORT NO. 4

IMELINESS OF BOARD OF PERSONNEL APPEALS ANDLING OF UNFAIR LABOR PRACTICES CASES

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Objective: To provide information to the Personnel and Labor Relations Commission on Question 4:

> Is the Board of Personnel Appeals getting their decisions out in five months as required by statute? If not, what can be done to expediate the process?

Prepared By:

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Personnel and Labor Relations
Study Commission

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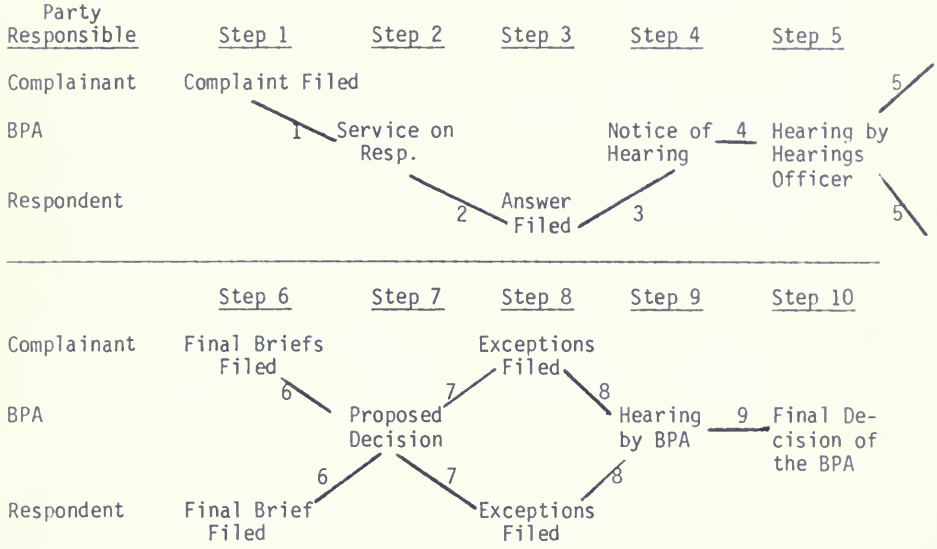
I. INTRODUCTION

The focus of this paper is: 1) the statutory and regulatory time requirements that govern various stages of the hearings process for unfair labor practice cases; 2) the time lapses that have actually occurred at the various stages in cases completed by the Board in the previous year; and 3) reforms by the Board to speed up the hearing process.

II. TIME REQUIREMENTS GOVERNING BOARD OF PERSONNEL APPEALS' HANDLING OF UNFAIR LABOR PRACTICES

The following chart outlines the steps in the hearings process for unfair labor practices and indicates which of the numbered time periods between steps are governed by statute or BPA regulation.

Steps in the Process



1. This time period is not governed by statute or regulation but is generally short, 2-5 days.
2. A ten day period for filing answers is established by administrative rule ARM 24.26.681.
3. This period is not governed by statute or rule and has been found by the Labor Relations Bureau to be lengthy in a number of cases.
4. A five working day minimum is established by statute 39-31-405, MCA and a 20 working day maximum is established by administrative rule ARM 24.26.682.
5. The time period for filing final briefs is not governed by statute or rule and is set by the hearings officer with extensions permitted upon request.
7. Both parties are statutorily allowed 20 days to file exceptions 39-31-406, MCA.

6,8,9 are not specifically governed by statute or rule.

In addition to the above limits on time periods between specific steps, the Board of Personnel Appeals is statutorily required by a 1979 amendment to "issue a final order within 5 months after a complaint is submitted to the hearings officer" 39-31-406, MCA.

The language "submitted to the hearings officer" appears to be in dispute. The Board takes the position that this language refers to the date on which final briefs are submitted to the hearings officer (step 6) and gives the Board five months from that date to issue a final order.

Some constituents argue that this language could just as well refer to Step 5, the date of the hearing or step 4, the date the notice of hearing is served and naming the hearings officer is named.

III. PROCESSING TIMES FOR UNFAIR LABOR PRACTICE CASES HEARD OVER THE PAST YEAR

Below is a chart indicating the time lapse in days from the date of filing to each major step in the hearings process for unfair labor practice cases heard in the past year.

The insets within this chart indicate the number of days between the steps indicated at the top. Average time lapses are indicated at the bottom. (Please see the appendix for raw data.)

	Time Lapse in Days*								
Case	U.L.P.C. Filed Step 1	Hearing Step 5	Final Briefs Submitted Step 6	5-6	Proposed Decision Step 7	6-7	Final Order Step 10	7-10	6-10
10-79	2/79	51	51	0	62	11	91	29	40
11-79	2/79	158	206	48	Pending		-	-	-
19-79	5/79	73	142	69	320		455	135	313
26,27-79	7/79	133	255	122	287	32	None	-	-
29-79	6/79	155	270	115	400	130	490	90	220
30-79	7/79	Briefed	180	-	260	80	412	152	232
31,37-79	8/79	159	197	38	233	36	345	112	148
42-79	9/79	360	408	48	515	107	572	57	164
44-79	10/79	Briefed	122	-	143	21	186	43	64
43-79 47,48	10/79	325	340	15	519	179	589	70	249
49-79	12/79	82	128	46	176	48	310	134	182
5-80	1/80	Briefed	111	-	163	52	246	89	135
10-80	3/80	140	167	27	275	108	387	112	220
13-80	4/80	82	107	25	186	79	227	41	120
15-80	4/80	162	162	-	170	8	217	47	55
16-80	6/80	80	104	24	251	147	287	36	183

Time Lapse in Days* (cont.)

Case	U.L.P.C. Filed Step 1	Hearing Step 5	Final Briefs Submitted Step 6	5-6	Proposed Decision Step 7	6-7	Final Order Step 10	7-10	6-10
30-80	7/80	159	180	21	228	48	354	126	174
29-80	7/80	67	115	48	186	71	243	57	128
34-80	8/80	Briefed	178	-	245	67	270	25	92
39-80	9/80	181	190	9	291	101	411	120	221
23,43-80	12/80	51	81	30	125	44	155	30	74
8-81	2/81	60	105	45	-	-	-	-	-
24-81	3/81	-	79	-	192	113	237	45	158
18-81	4/81	108	120	12	Pending		-	-	-
19-81	5/81	112	150	-	Pending		-	-	-
Average:		4 months 2 weeks	5 months 2 weeks	39 days	8 months 1 week	74 days	10 mos. 3 weeks	77 days	151 days

* For convenience, all months were assumed to equal thirty days in calculating time lapses up to one full year. Consequently, most figures will contain some error. Figures with the greatest degree of error will be those approaching 365 and those approaching two years or 730 days. These figures could be short by up to 5 days.

The time lapses of greatest interest are those between step 6 and step 10. At its most conservative interpretation, the five month requirement covers this period. As can be seen from the insert covering the period between these steps, the Board is very close to keeping its average time within the prescribed 5 months (approximately 150 days.) However, in over half the cases (55%), the Board exceeds the 5 month limit. In five cases or 25%, the time exceeds 7 months.

Substantial time lapses at several other stages of the process also appear to contribute to the overall processing times. In eight cases (40%), five months or more elapsed between step 1, date of filing and step 5, date of hearing. In five or 25% of the cases, four months or more elapsed between step 7, the date of the proposed decision and step 10, the final order of the Board. In three cases, four months elapsed between step 6, submission of final briefs and step 7, issuance of the proposed decision. In one case, four months were eaten up by parties to the case between the hearing and filing of final briefs.

IV. REFORMS OF THE BOARD OF PERSONNEL APPEALS TO INCREASE THE TIMELINESS OF BOARD DECISIONS

Many of the recommendations of the Public Employment Relations Service (PERS) Review and Evaluation Team involved streamlining the hearings process. Bob Jensen, Executive Director of the Board of

Personnel Appeals staff has indicated that many of these recommendations are being implemented and are expected to shorten the process.

The following steps are now being taken:

1. A greater number of Board meetings are being scheduled. Whenever possible, the Board meets on the third Friday of each month.

2. Proponents are being encouraged to submit pre-deliberation briefs in lieu of oral arguments.

3. Bench memorandums are being provided by the staff to help shorten the process.

4. A screening process has been established to eliminate cases which fail to state a course of action under the statute.

5. Settlements are attempted on the part of the hearings officer where it seems evident a case could be settled.

6. Implementation of an appraisal system to increase staff accountability and productivity performance.

7. Implementation of a time target system for hearing cases to insure that priorities are established centrally and that processing times and delays are monitored.

V. CONCLUSION

The above figures indicate that while the Board stays within its own definition of the five month statutory requirement on the average, it exceeds it in over 50% of the cases.

Time lapses in excess of four or five months between the filing date and the hearing and between the proposed finding and final order of the Board also contribute in a number of cases to the overall length of time required for processing.

Bob Jensen has indicated that the Board and staff are aware of the need to improve timeliness and have implemented a number of measures recommended by PERS to do so. It is currently too early to evaluate the effectiveness of these measures.

VI. ADDITIONAL INFORMATION REQUIRED

Within the next six to nine months the effects of the recent reforms should be evident. The Board of Personnel Appeals should be asked to provide information on the time lapse between steps of the hearings process completed between September of 1981 and June 30 of 1982 for the July 6 meeting.

manner as is provided in this chapter for enforcement of collective bargaining agreements.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(9).

39-31-311. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. No person may serve as a fact finder or as an arbitrator under this chapter until he has successfully completed the course or equivalent education.

History: En. 59-1614.1 by Sec. 1, Ch. 57, L. 1977; R.C.M. 1947, 59-1614.1.

Part 4

Unfair Labor Practices

39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization; however, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member, must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(1); amd. Sec. 34, Ch. 397, L. 1979.

39-31-402. Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce employees in the exercise of the right guaranteed in 39-31-201 or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;

(3) use agency shop fees for contributions to political candidates or parties at state or local levels.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(2).

39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board pursuant to this part.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 35, Ch. 397, L. 1979.

39-31-404. Six-month limitation on unfair labor practice complaint — exception. No notice of hearing shall be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-405. Unfair labor practice complaint — notice of hearing — service — answer. (1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board or any agent designated by the board for such purposes shall issue and cause to be served upon the person a copy of the complaint and a notice of hearing before the board, a member thereof, or before a designated agent at a time and place therein fixed, not less than 5 working days after the date of service.

(2) The person upon whom the charge is served shall file an answer to the complaint.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-406. Hearing on complaint — findings — order. (1) The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter, in its discretion the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any back pay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is

39-7-208. Individual action. Nothing in this part shall preclude an individual from prosecuting a private action in the district court alleging violation of the provisions of this part or any other law.

History: En. 41-2606 by Sec. 6, Ch. 320, L. 1975; R.C.M. 1947, 41-2606.

39-7-209. Court enforcement of commissioner's decision. (1) A decision by the commissioner pursuant to 39-7-207 may be enforced by the district court if the commissioner applies to the court, within 60 days from date of decision, for an order enforcing the decision and if the time provided to initiate judicial review by the employer has passed pursuant to Title 2, chapter 4, part 7.

(2) The commissioner shall apply to the district court of the county in which the employer has its principal place of business or in the first judicial district of the state.

(3) A proceeding under this section is not a review of the merits of the commissioner's decision.

History: En Sec. 1, Ch. 286, L. 1979.

Compiler's Comments

Codification Sec. 2, Ch. 286, L. 1979, provided: "It is intended that section 1 be codified as an integral part of Title 39, chapter 7, part 2, and the provisions of Title 39, chapter 7, part 2, apply to section 1."

APPENDIX B

ADMINISTRATIVE RULES OF THE BOARD OF PERSONNEL APPEALS GOVERNING UNFAIR LABOR PRACTICE CHANGES

Unfair Labor Practice Charges

24.26.680 COMPLAINT (1) A complaint alleging that a person has engaged in or is engaging in an unfair labor practice may be filed by an employee, a group of employees, a labor organization or a public employer within six months thereof.

(2) A complaint shall be in writing. The original shall be signed and verified by the complainant or his authorized representative. The original and five copies of the complaint shall be filed with the board. The board shall serve one copy of the complaint on each party named in the complaint.

(3) A complaint shall contain the following:

(a) the name, address and telephone number of the complainant;

(b) the name, address and telephone number of the party against whom the charge is made;and

(c) a clear and concise statement of facts constituting the alleged violation, including the time and place of occurrence of the particular acts and a statement of the portion or portions of the law or rules alleged to have been violated.

(4) If the board determines that the facts alleged in the complaint do not constitute an unfair labor practice under section 39-31-401 and 39-31-402, MCA, it shall dismiss the charge. (History: Sec. 39-31-104, MCA; IMP 39-31-406, MCA; NEW, Eff. 6/4/74.)

24.26.681 ANSWER (1) The party named in the complaint shall file a written verified answer within ten days after service of the complaint.

(2) One copy of the answer shall be served on the complainant, and the original, with proof of due service and five copies, shall be filed with the board.

(3) The answer shall include a specific admission, denial, or explanation of each allegation in the complaint.

(4) If the party charged fails to file a timely answer, the board may consider it an admission of material facts and waiver of a hearing. (History: Sec. 39-31-104, MCA; IMP 39-31-406, MCA; NEW, Eff. 6/4/74.)

24.26.682 NOTICE OF HEARING (1) After the time for filing an answer has passed, the board shall serve a notice of hearing upon the parties. The hearing date shall not be less than five nor more than 20 working days from the date of service. The notice shall include all those items listed

in section 2-4-601, MCA, and shall state whether the board or an agent of the board will hear the complaint. (History: Sec. 39-31-104, MCA; IMP 39-31-406, MCA; NEW, Eff. 6/4/74.)

24.26.683 PROPOSED FINDINGS (1) The board may request proposed findings of fact and conclusions of law. (History: Sec. 39-31-104, MCA; IMP 39-31-406, MCA; NEW, Eff. 6/4/74.)

24.26.684 EXCEPTIONS (1) If a majority of the board have not heard the case, the person who conducted the hearing shall serve a proposed decision and order upon the parties who shall have 20 days to file exceptions and present briefs and oral arguments to the entire board. (History: Sec. 39-31-104, MCA; IMP 39-31-406, MCA; NEW, Eff. 6/4/74.)

Rules 24.26.685 through 24.26.694 Reserved

NEXT PAGE IS 24-1793

APPENDIX C

BOARD OF PERSONNEL APPEALS UNFAIR LABOR PRACTICE DECISIONS

CASE/FILE NUMBER	Step 1 DATE FILED	Step 5 DATE OF HEARING	Step 6 DATE SUBMITTED	Step 7 DATE OF DECISION	Step 10 DATE OF FINAL ORDER
ULP 10-79	2-1-79	3-21-79	3-21-79	4-3-79	5-2-79
ULP 11-79	2-12-79	7-20-81	9-8-81	Pending	
ULP 19-79	5-17-79	7-30-79	10-9-79	4-7-80	8-22-80
ULP 26,27 79	7-1-79	11-13-79	3-5-80	4-17-81	
ULP 29-79	6-25-79	11-30-79	3-21-80	7-31-80 5-21-81	10-30-80 (Remanded) 7-24-81
ULP 30-79	7-20-79	Briefed	1-21-80	4-10-80	9-12-80
ULP 31,37-79	8-20-79	1-29-80	3-7-80	4-14-80	8-8-80
ULP 42-79	9-19-79	9-18-80	11-7-80	2-17-81	4-14-81
ULP 44-79	10-25-79	Briefed	2-27-80	3-17-80	4-30-80
ULP 43-79	10-1-79	8-25-80	9-16-80	2-4-81	4-14-81
ULP 47,48,49-79	12-20-79	3-11-80	4-28-80	6-16-80	10-30-80 (Remanded) 8-28-81
ULP 5-80	1-25-80	Briefed	4-14-80	7-7-80	9-30-80
ULP 10-80	3-17-80	8-6-80	9-3-80	12-22-80	4-14-81
ULP 13-80	4-8-80	7-1-80	7-25-80	10-14-80	11-25-80
ULP 15-80	4-18-80	9-30-80	9-30-80	10-8-80	11-25-80
ULP 16-80	6-16-80	9-5-80	9-29-80	2-27-81	4-3-81
ULP 30-80	7-30-80	1-8-81	1-30-81	3-18-81	7-24-81
ULP 29-80	7-30-80	10-6-80	11-25-80	2-6-81	4-3-81
ULP 34-80	8-15-80	Briefed	2-13-81	4-20-81	5-15-81
ULP 39-80	9-9-80	3-10-81	3-20-81	6-30-81	10-30-81
ULP 23,43-80	12-11-80	2-2-81	3-2-81	4-16-81	5-15-81
ULP 8-81	2-23-81	4-22-81	6-8-81	Settlement Before Decision	
ULP 24-81	3-2-81		5-21-81	9-14-81	10-30-81
ULP 18-81	4-30-81	8-17-81	9-2-81	Pending	
ULP 19-81	5-18-81	9-10-81	10-20-81	Pending	